

1984 S.C. Op. Atty. Gen. 44 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-13, 1984 WL 159821

Office of the Attorney General

State of South Carolina

Opinion No. 84-13

February 7, 1984

*1 The Honorable Dill Blackwell
Member
House of Representatives
335-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Blackwell:

Attorney General Medlock has referred your letter of February 1, 1984 to me for response. By your letter you have asked whether service on the Appalachian Council of Governments by elected city, county, and state officials would violate the dual office holding provisions of the Constitution of the State of South Carolina. It is the opinion of this Office that such service would not constitute dual office holding.

Appalachian Council of Governments was created pursuant to [Article VIII, Section 13 of the Constitution of the State of South Carolina](#), when six counties in the upper part of South Carolina signed certain cooperating agreements. [Article VIII, Section 13](#) provides:

Any county, incorporated municipality, or other political subdivision may agree with the State or with any other political subdivision for the joint administration of any function and exercise of powers and the sharing of the costs thereof.

Nothing in this Constitution shall be construed or prohibit the State or any of its counties, incorporated municipalities, or other political subdivisions from agreeing to share the lawful cost, responsibility, and administration of functions with any one or more governments, whether within or without this State.

The prohibitions against dual office holding contained in Article VI of this Constitution shall not apply to any elected or appointed official or employee who shall serve on a regional council of government created under the authority of this section.

[Emphasis added.]¹ The use of the phrase ‘shall not’ compels an imperative construction. See 2A [Sutherland Statutory Construction](#) § 57.08; Also, [Attorney General v. Baker](#), 9 Rich. Eq. 521, 531 (1856). Thus, the prohibition against dual office holding in [Article VI, Section 3](#) must be read with [Article VIII, Section 13](#) as not applying to elected city, county, or state officials who would also serve on the Appalachian Council of Governments. Accordingly, we do not believe it would violate dual office holding for such elected officials to serve simultaneously on the Appalachian Council of Governments.²

I trust that this response will satisfactorily respond to your inquiry. If you need additional clarification, please do not hesitate to contact me.

Sincerely,

Robert D. Cook
Executive Assistant for Opinions

Footnotes

- 1 [Article VI, Section 3](#) contains the following provision: 'No person shall hold two offices of honor or profit at the same time; provided, that this limitation shall not apply to officers in the militia, notaries public, or delegates to a Constitutional Convention.'
- 2 Unlike [Article VII, Section 15](#), [Article VIII, Section 13](#) does not specifically exempt members of the General Assembly from the dual office holding prohibitions. However, we believe that the framers' intent is clear that elected officials, particularly legislators, be exempt from dual office holding provisions relative to councils of government. It would elevate form over substance to exempt legislators under one constitutional provision but not another.

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